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IN THE
Supreme Court of the United States
October Term, 1969

No. 628

DANIEL JAY SCHACHT, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

**MOTION FOR LEAVE TO SUBMIT PETITION
FOR WRIT OF CERTIORARI OUT OF TIME**

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Attorneys for Petitioner

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*To The Honorable, The Chief Justice And Associate
Justices Of The Supreme Court Of The United States:*

Comes now the Petitioner, DANIEL JAY SCHACHT, through his attorneys, DAVID H. BERG and ARTHUR MANDELL, and respectfully requests the Court to grant this Motion for leave to submit his Petition out of time, for the following reasons:

I.

Petitioner, a layman, relied on his attorney of record before the United States Court of Appeals for the Fifth Circuit, who was assigned the duty to file his Petition for

Writ of Certiorari timely, (Tr. 16, 39), failed to do so, thus denying Petitioner his right to Petition this Court for such Writ, thus depriving him proper legal representation as guaranteed under the Sixth Amendment of the United States Constitution.

II.

Petitioner did not retain the attorney who represented him before the United States Court of Appeals for the Fifth Circuit and who was to have filed the Petition for Writ of Certiorari before the United States Supreme Court (Tr. 9, 16, 26, 41). The Houston Chapter of the American Civil Liberties Union contacted the cooperating Attorney Gray, who then agreed to represent Petitioner in the appellate court, including the Supreme Court of the United States, as noted by his assistant, Attorney Bob Hunt (Tr. 26), at a hearing on this matter, held on September 2, 1969, before The Honorable James Noel, United States District Judge for the Southern District of Texas (Tr. 1).

III.

The American Civil Liberties Union Attorney Gray had his assistant, Bob Hunt, contact Petitioner by telephone to inform him that time was running out on the filing of the Petition for Writ of Certiorari, and that he must therefore either come up with some money or sign a Pauper's Oath (Tr. 30); Petitioner, however, was never informed of the date for filing (Tr. 7, 31, 45), even by the United States Court of Appeals for the Fifth Circuit (Tr. 7), and awaited in vain for further contact from Gray or Hunt to comply with their wishes concerning the filing of the Petition (Tr. 7).

At the above-mentioned hearing, American Civil Liberties Union Attorney Gray testified: That he let the date go by because he didn't want to put up the money (Tr. 38); that he never corresponded with Petitioner about the deadline (Tr. 40); and that the ACLU did not seem interested in putting up the money (Tr. 41). Gray's assistant Hunt testified: That he, Hunt, did not ask the ACLU for any money, and was "not going to ask the American Civil Liberties Union for nothing (sic)." (Tr. 31).

Yet, Dr. Clark Read, Chairman of the Houston Chapter of the ACLU, testified he told Mr. Gray the ACLU would finance the expense of an appeal in this case to the Supreme Court (Tr. 16).

Petitioner relied upon Counsel to perfect the appeal (Tr. 11) and therefore never apprised himself of the deadline for filing of the Petition for Writ of Certiorari (and never knew the deadline had passed until he received an order, on August 29, 1969, to surrender himself), or of the method of proceeding on Motions and Writs *pro se*; he was in fact ignorant of these matters until the date he prepared his affidavit in support of this Motion. Petitioner made no attempt to obtain other Counsel until after the deadline passed (Exhibit A).

IV.

American Civil Liberties Union Cooperating Attorney Gray did nothing about the filing of the Petition for Writ of Certiorari other than to obtain an extension of time to file the Petition (Tr. 35). The Petition for Writ of Certiorari and accompanying Motion were prepared by

Petitioner's present attorney Berg only after he entered the case, which entrance was subsequent to the execution of the order that Petitioner surrender himself to the United States Marshal, dated August 28, 1969, and formally accepted by the Court at the hearing referred to above on September 2, 1969 (Tr. 12).

V.

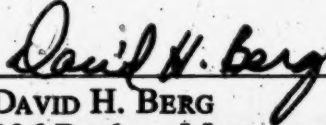
The Transcript of the record and judgment of the District Court, along with the Opinion and Judgment of the United States Court of Appeals for the Fifth Circuit (Vols. I and II), were prepared by the Clerk of the Fifth Circuit Court of Appeals and sent to prior Counsel; these records, prerequisite to the filing of a Petition for Writ of Certiorari were made available to present Counsel on September 9, 1969 (Exhibit 2).

VI.

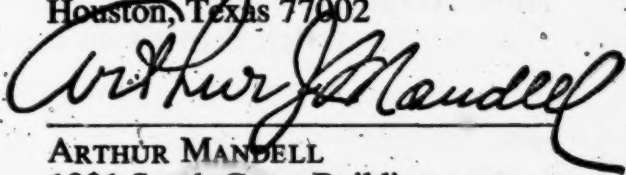
The arrest and conviction of Petitioner, DANIEL JAY SCHACHT, raises grave Constitutional questions concerning the First and Fifth Amendments to the Constitution of the United States which reach far into our changing times. If a dissident member of the younger generation, protesting his country's involvement in the Vietnamese war, is to be denied his final appeal because of the incompetency of Counsel, or, failing that, his own justifiable inattentiveness to the details of dates and methods of filing the Petition, none of the questions which torture our country's spirit will be answered and nothing will be accomplished save the creation of an ideological criminal by silencing a dissenting voice.

Petitioner Schacht is presently serving a six-month sentence.

Respectfully submitted,



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Attorneys for Petitioner

APPENDIX A
AFFIDAVIT

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this date personally appeared DANIEL JAY SCHACHT; who, being by me duly sworn, on his oath states:

I, DANIEL JAY SCHACHT, of 4506 Cosby, Houston, Harris County, Texas, give the following statement concerning the matter of my appeal before the Supreme Court of the United States of America:

After my conviction for the unauthorized wearing of the uniform of the Armed Forces of the United States, I contacted the American Civil Liberties Union about representation on appeal. Approximately one month after my sentence, the American Civil Liberties Union, through its local president, Dr. Clark Read, contacted me to inform me that Mr. Will Gray, their cooperating attorney, would handle my appeal to the Fifth Circuit Court of Appeals and if he was unsuccessful there, would carry the appeal to the Supreme Court of the United States. I met with Mr. Gray during that period of time on one occasion, during which he assured me he would handle my appeal. I never saw Mr. Gray again.

After the affirmation of my conviction in the Fifth Circuit Court of Appeals, I was informed by Mr. Gray's associate, Mr. Bob Hunt, that an appeal would be taken to the Supreme Court of the United States. I trusted the ACLU attorney completely, and never bothered to apprise

myself of the deadline for filing the Writ of Certiorari or the manner in which I might personally file Writs and Motions. In fact, I did not know I was authorized to file my own Motions and Writs until informed of such by my new attorney for purposes of giving this statement.

I did not know the date for filing the Writ of Certiorari had run out until I was ordered to report to the United States Marshal in Houston, Texas, on September 2, 1969, at 8:30 a.m. I did so, and am presently serving my sentence.

Had I known Will Gray would not have filed the Petition on time, I certainly would have retained Counsel as I have since done after discovering the Writ was never filed.

DANIEL JAY SCHACHT

SWORN TO and SUBSCRIBED before me by the said DANIEL JAY SCHACHT on this the 5th day of September, 1969, to certify which, witness my hand and seal of office.

(SEAL)

Notary Public in and for Harris
County, Texas.

APPENDIX B**STATE OF TEXAS §****COUNTY OF HARRIS §**

BEFORE ME, the undersigned authority, personally appeared DAVID H. BERG, who, being by me first duly sworn, on his oath states:

That the facts and things set out in the above, and foregoing Motion pertaining to DAVID H. BERG, referred to in the Motion as Petitioner's present Counsel, are true and correct.

David H. Berg

SWORN TO and SUBSCRIBED before me by the said DAVID H. BERG on this the ____ day of September, 1969, to certify which, witness my hand and seal of office.

**Notary Public in and for Harris
County, Texas.**

APPENDIX C

RECEIPT		Date <u>9-9</u>	19 <u>69</u>	No. <u>4235</u>
Received From <u>David Burg, Attorney</u>				
Address <u>Schottland</u>				
<u>Fifteen and no/1.00</u>		<u>Dollars \$ 15.00</u>		
For <u>Transcript of Record, Judgment, Brief</u>				
<u>(Vol. 1, 4, 11) & letter from Court, 5th Cir</u>				
ACCOUNT		HOW PAID		
AMT. OF ACCOUNT		CASH	<u>15.00</u>	
AMT. PAID		CHECK		
BALANCE DUE		MONEY ORDER		
		By <u>Will Gray</u>		
		<u>Barbara Lewis</u>		

